

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 687 of 1998

with

LETTERS PATENT APPEAL No 689 of 1998

and

SPECIAL CIVIL APPLICATION No.4026 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAGANBHAI BHIMJIBHAI

Versus

STATE OF GUJARAT

Appearance:

LPA NO.687/98:

MR NIRUMPAM NANAVATI, Sr. Advocate with Mr PJ KANABAR for the appellants.

MR HB SHAH for the respondents.

MR KC SHAH, AGP, for respondents Nos.1 to 3.

LPA NO.689/98:

MR HB SHAH for the appellant.

MR NIRUMPAM NANAVATI WITH MR PJ KANABAR for the

respondents.

MR K.C.SHAH, AGP, for respondents Nos.5, 6 & 7.

CORAM : MR.JUSTICE M.R.CALLA and

MR.JUSTICE J.R.VORA

Date of Order: 10/07/98

ORAL JUDGMENT (Per M.R.Calla, J.)

These Letters Patent Appeals Nos.687 of 1998 and 689 of 1998 were filed against the order dated 1st June 1998 passed in Civil Application No.4656 of 1998 in Special Civil Application No.4026 of 1998; because both the sides were aggrieved against this order dated 1st June, 1998. The main Special Civil Application No.4026/98 filed by Dr.Maganbhai Bhimjibhai and others is pending at admission stage. These Letters Patent Appeals were admitted by this Court on 16th June, 1998 and in Letters Patent Appeal No.689/98, an interim order was passed after hearing both the sides.

This interim order dated 16th June 1998 passed in Letters Patent Appeal No.689/98 was challenged before the Supreme Court by the appellants Dr.Maganbhai Bhimjibhai and others by filing Special Leave Petition. Dr.Maganbhai Bhimjibhai and others had also filed another Special Leave Petition because interim relief was not granted in their favour in Letters Patent Appeal filed by them. Both these SLPs have been dismissed by the Supreme Court on 22nd June, 1998 and while dismissing the appeals, the Supreme Court has ordered that the Court was not inclined to interfere with the interim order passed by this Court on 16th June, 1998, but certain clarification has been given with regard to the scope of inquiry under section 22 before the Assistant Charity Commissioner. The order passed by the Supreme Court is reproduced as under:

"IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.3191-3192 OF 1998
Arising out of
Special Leave Petition (Civil) Nos.10371-72 of 1998

Dr.Maganbhai Bhimjibhai and others ... Appellants
vs.

State of Gujarat & others ... Respondents

O R D E R

Leave granted.

Heard both sides. We are not inclined to interfere with the interim order passed by the High Court on 18.6.1998.

Learned senior counsel for the appellant however submits that the High Court ought not to have restricted the scope of inquiry by the Assistant Charity Commissioner by stating that he should only take into notice the factum of the election without going into the validity, correctness and propriety including the result thereof. Learned senior counsel submits that the Assistant Charity Commissioner can go into those issues in proceedings under section 22 of the Bombay Public Trust Act. On the other hand learned senior counsel for the respondent submits that the Gujarat High Court has already decided that the Assistant Charity Commissioner cannot go into those issues and that the High Court was right in not permitting the Assistant Charity Commissioner to go into the said issues. In reply learned senior counsel for the appellants submits that there are also decisions in his favour which say that the Assistant Charity Commissioner can go into these issues.

It is not necessary for this Court to say anything on the above dispute. It will be open to the parties to raise their respective contentions before the Assistant Charity Commissioner regarding the scope of section 22 and the jurisdiction of the Assistant Charity Commissioner to go into these issues. It is clarified that the observations of the High Court restricting the scope of the inquiry before the Assistant Charity Commissioner will not therefore be binding on him.

We should not be understood to have expressed anything on the merits regarding the scope of section 22 or the jurisdiction of the Assistant Charity Commissioner.

Subject to the above, these appeals are dismissed.

(M.Jagannadha Rao)

(S.Rajendra Babu)

New Delhi
June 22, 1998."

In the meantime, the Assistant Charity Commissioner had passed an order on 23rd June 1998 deciding the controversy keeping in view the interim order dated 16th June, 1998 passed by this Court with regard to the scope of inquiry under section 22.

While Mr H.B.Shah appearing for the appellant in

Letters Patent Appeal No.689/98 seeks to withdraw LPA No.689/98 and Mr Nirupam Nanavati appearing for the appellant in Letters Patent Appeal No.687/98 seeks to withdraw LPA No.687/98 as also the Special Civil Application No.4026/98, pending at admission stage, Mr Nanavati submits that it may be clarified that notwithstanding the order dated 23rd June 1998 passed by the Assistant Charity Commissioner in the light of the interim order dated 16th June, 1998 passed by this Court in LPA No.689/98, now he may decide the matter afresh keeping in view the clarification given by the Supreme Court.

It is the common case of the parties that the elected members have already taken over and are now functioning as the trustees of the concerned trust and they have taken over after the interim order dated 16th June 1998 passed by this Court.

In the facts and circumstances of this case, while both the Letters Patent Appeals Nos.687/98 and 689/98 are dismissed as withdrawn and Special Civil Application No.4026/98 is also dismissed as withdrawn, it is made clear that the Assistant Charity Commissioner would now proceed de novo to pass order afresh in the light of the clarification made by the Supreme Court as above with regard to the scope of inquiry under section 22. It will be open for both the sides to put up their respective case with regard to the scope of enquiry under section 22 before the Assistant Charity Commissioner and to raise all submissions on all aspects as may be available to them. As and when such order is passed by the Assistant Charity Commissioner it will be that order which will govern the rights of the parties subject to order which may be passed by next higher authority or court in such further legal remedy which may be available to either of them in accordance with law.

Both these Letters Patent Appeals are accordingly dismissed as withdrawn. A copy of this order will also be included in the record of Special Civil Application No.4026 of 1998 as the same also stands dismissed as withdrawn in terms of this order and the notice if any issued therein stands discharged. The concerned trust to bear the cost of the Assistant Charity Commissioner for this litigation in accordance with law.

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(vjn)